MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Lisa M. Johnson
Brownsburg, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

D.R.,
Appellant-Respondent

v.

State of Indiana,
Appellee-Petitioner.

August 23, 2023

Court of Appeals Case No. 22A-JV-724

Appeal from the Clay Circuit Court

The Honorable Joseph D. Trout, Judge

Trial Court Cause No. 11C01-2012-JD-288

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] D.R. ("D.R.") appeals his juvenile adjudications that he committed acts that would be Level 4 felony child molesting[1] and Level 6 felony sexual battery[2] if committed by an adult. D.R. argues that the juvenile court committed fundamental error when it admitted certain evidence. Concluding that the juvenile court did not commit fundamental error, we affirm the juvenile court's adjudication.

[2] We affirm.

Issue

> Whether the juvenile court committed fundamental error when it admitted evidence.

Facts

[3] In 2020, Jennifer Steinbrook ("Steinbrook") and Damon Reed ("Reed") were neighbors. Steinbrook had two children, including ten-year-old J.S. ("J.S."). Reed also had children, including his sixteen-year-old son D.R. Steinbrook's and Reed's families spent time together, and their children would regularly spend time in both of their homes.

---

[1] IND. CODE § 35-42-4-3.

[2] I.C. § 35-42-4-8.

[4] In November 2020, J.S. told Steinbrook that D.R. had touched her inappropriately. Steinbrook called the Department of Child Services ("DCS"), and DCS sent Family Case Manager Michelle Puckett ("FCM Puckett") to Steinbrook's home to speak with J.S. After briefly talking with J.S., FCM Puckett notified Detective Ryan Winters ("Detective Winters") and scheduled an interview for J.S. at Suzie's Place.

[5] J.S. went to Suzie's Place where she gave a video-recorded interview ("the interview"). During the interview, J.S. stated that D.R. had touched her on multiple occasions. Specifically, J.S. explained that one night, while she was lying in bed and began to doze off, D.R. had kissed her neck and rubbed her legs. J.S. noticed that D.R. was not wearing pants. D.R. continued to touch J.S.'s arms and thighs. J.S. explained that D.R. then put his hand beneath her clothing and touched and rubbed her vagina. J.S. further explained that when she had asked D.R. what he was doing, D.R. responded by telling her to go back to sleep and not to tell anyone. J.S. left the bed to go to the bathroom. When she returned, J.S. saw D.R. move his hands "up and down" his penis until "white stuff" came out. (State's Ex. 1). D.R. also grabbed J.S.'s hand and placed it on his penis.

[6] J.S. also talked about a second instance where D.R. had touched her. J.S. explained that she and D.R. had been watching a movie while sitting on a couch. D.R. grabbed her hand and began kissing her lips, cheeks, neck, and face. D.R. also asked J.S. to suck his penis. When J.S. refused and attempted to leave, D.R. held her in place and told her that she was not leaving.

[7] After J.S.'s interview, Detective Winters scheduled an interview with D.R. and his father. During this interview, D.R. denied molesting J.S. but admitted that he may have inappropriately touched her inadvertently. Specifically, D.R. told Detective Winters that his hand "might have gone up a bit" during an interaction where he had been tickling J.S.'s thighs. (State's Ex. 3). D.R. also told Detective Winters that on another occasion, while he had been straddling J.S. and tickling her, he may have touched her vagina because his fingers were long.

[8] In December 2020, the State filed a petition alleging that D.R. had committed acts that would have constituted Level 4 felony child molesting and Level 6 felony sexual battery if committed by an adult. In December 2021, the juvenile court held a pretrial conference hearing. At this hearing, D.R. and the State entered into a stipulation that the video recording of J.S.'s interview would be admitted into evidence "in lieu of [J.S.] testifying at the fact-finding hearing[.]" (Supp. Tr. at 4). Further, the juvenile court referenced the parties' stipulation to the admissibility of the interview in its December 2021 order.

[9] In February 2022, the juvenile court held a fact-finding hearing. At the hearing, the juvenile court heard the facts as set forth above. Additionally, the State moved to admit the interview into evidence pursuant to the parties' stipulation. D.R. stated that he had "[n]o objection" to the admission of the interview, and the juvenile court admitted the interview as State's Exhibit 1. (Tr. at 24). The State played the interview for the juvenile court.

[10] Detective Winters also testified at the hearing. Specifically, Detective Winters testified that he believed J.S.'s statements from the interview were truthful and that he did not believe that J.S. had been coached. D.R. did not object to any of this testimony. Detective Winters also testified that D.R.'s statements during his interview were not consistent with someone who was innocent and that D.R. had refused to take a polygraph. D.R. did not object to any of this testimony.

[11] Steinbrook testified that J.S. had told her about two occasions where D.R. had inappropriately touched J.S. Steinbrook also testified that she had found J.S.'s story to be truthful. D.R. did not object to any of this testimony. FCM Puckett testified that J.S. had told her that D.R. had inappropriately touched J.S. two times and that she found the interview J.S. had given at Suzie's Place to be credible. D.R. did not object to any of this testimony.

[12] At the conclusion of the fact-finding hearing, the juvenile court entered true findings for both allegations. At D.R.'s dispositional hearing, the juvenile court ordered D.R. be made a ward of the Indiana Department of Correction ("the DOC"). The juvenile court suspended D.R.'s sentence and placed him on probation. D.R. now appeals.

Decision

[13] D.R. argues that the juvenile court committed fundamental error when it admitted certain evidence. Specifically, he challenges the admission of: (1) J.S.'s video-recorded interview; (2) Steinbrook's and FCM Puckett's testimony

related to statements J.S. had made to them and her credibility; (3) Detective Winters' opinion testimony and testimony regarding D.R.'s refusal to submit to a polygraph. We address each of his arguments in turn.

[14] At the outset, we note that D.R. did not object to the admission of any of the evidence presented at the fact-finding hearing. Thus, any arguments challenging the admission of evidence are waived. *Lewis v. State*, 755 N.E.2d 1116, 1122 (Ind. Ct. App. 2001) ("Failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error upon appeal").

[15] In order to circumvent waiver, D.R. argues that the juvenile court committed fundamental error when it admitted evidence. A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. *Brown v.* State, 929 N.E.2d 204, 207 (Ind. 2010). The fundamental error exception is "extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). The error claimed must either "make a fair trial impossible" or constitute "clearly blatant violations of basic and elementary principles of due process." *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009), *reh'g denied*. This exception is available only in "egregious circumstances." *Brown v. State*, 799 N.E.2d 1064, 1068 (Ind. 2003).

[16] D.R. first challenges the admission of J.S.'s video-recorded interview. However, D.R., at a pretrial conference, stipulated to the admission of J.S.'s interview and had no objection to its admission at the fact-finding hearing. D.R. has therefore invited the error about which he now complains.

[17] The Indiana Supreme Court explained invited error as follows:

> The invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an error that [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct. Where a party invites the error, [he] cannot take advantage of that error. In short, invited error is not reversible error.

Matter of J.C., 142 N.E.3d 427, 432 (Ind. 2020) (internal citations omitted). "[T]o establish invited error, there must be some evidence that the error resulted from the appellant's affirmative actions as part of a deliberate, well-informed trial strategy." *Batchelor v. State*, 119 N.E.3d 550, 558 (Ind. 2019) (internal quotation marks omitted).

[18] Here, D.R. and the State entered into a stipulation that J.S.'s videotaped interview would be admitted into evidence "in lieu of [J.S.] testifying at the fact-finding hearing[.]" (Supp. Tr. at 4). Because D.R. entered into a stipulation with the State agreeing to the admissibility of J.S.'s video-recorded interview, he cannot now challenge it on appeal. This stipulation to the admissibility of the evidence certainly fits the definition of an "affirmative action" or "deliberate, well-informed trial strategy" that constitutes invited error. *See Batchelor*, 119 N.E.3d at 558; *see also Durden v. State*, 99 N.E.3d 645, 656 (Ind.

2018) (finding invited error where "counsel expressly declined any caveats or special instructions for the jury and repeatedly assured the court of his approval of the procedure employed, despite its defects").

[19] D.R. also challenges the admissibility of: (1) Steinbrook's and FCM Puckett's testimony related to statements J.S. had made to them and her credibility; and (2) Detective Winters' opinion testimony and testimony regarding D.R.'s refusal to submit to a polygraph. "We generally presume that in a proceeding tried to the bench a court renders its decisions solely on the basis of relevant and probative evidence. This longstanding principle has been termed the judicial-temperance presumption." *Konopasek v. State*, 946 N.E.2d 23, 28 (Ind. 2011). The Indiana Supreme Court further explained the judicial-temperance presumption as follows:

> On appeal, when a defendant challenges the admissibility of evidence at a bench trial and the evidence in fact was inadmissible, the judicial-temperance presumption comes into play. One way a defendant can overcome the presumption is by showing the trial court admitted the evidence over a specific objection[.] . . . If a defendant does overcome the presumption, the reviewing court then engages in full harmless-error analysis: the error is harmless if the reviewing court is satisfied that the conviction is supported by substantial independent evidence of guilt so that there is no substantial likelihood that the challenged evidence contributed to the conviction. If a defendant cannot overcome the presumption, a reviewing court presumes the trial court disregarded the improper evidence and accordingly finds the error harmless.

Id. at 30.

[20] Our review of the record reveals that D.R. did not object to any of the evidence that he challenges on appeal. Thus, he cannot overcome the judicial-temperance presumption by showing that the juvenile court had admitted the challenged evidence over a specific objection. Therefore, we presume that the juvenile court disregarded the improper evidence and accordingly, we find that the error was harmless. *See Id.*

[21] Even if D.R. had been able to overcome the judicial-temperance presumption, our result would not be any different. Because D.R. stipulated to the admissibility of J.S.'s recorded interview and that interview contains substantial independent evidence to support D.R.'s adjudications, we are satisfied that there was no substantial likelihood that the challenged evidence contributed to the adjudications. Therefore, we affirm the juvenile court's adjudications.

[22] Affirmed.[3]

Bradford, J., and Kenworthy, J., concur.

[3] We caution the juvenile court regarding the multiple instances of vouching testimony that had occurred at the fact-finding hearing. While juvenile courts are not advocates for defendants, inadmissible vouching testimony can amount to reversible error, even at a bench trial. *See Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind 2012) (holding that the trial court erred when it allowed vouching testimony into evidence).